

REMARKS:

At the time of the Final Office Action, claims 1-6, 8 and 15-20 were pending and considered by the Examiner. All of the pending claims stand rejected. Claims 1, 8 and 15 have been amended. Claims 1-6, 8 and 15-20 remain pending.

The claims stand rejected in view of Owens et al. (U.S. Design Patent 324,170).

In response to the Applicant's arguments filed on October 1, 2004, the Examiner incorrectly states that the Applicant simply argues that the device of Owens does not teach a center portion having a solid cross-section as claimed. In fact, the Applicant also argues that Owens pertains to an ornamental design and there is no teaching or suggestion that the device therein is made of a resilient or elastic material. For this reason alone, the claims of the subject application are not anticipated by Owens. The Examiner has not pointed to any teaching that would indicate the device in Owens is made of an elastic material. As is generally understood, the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification. Where is the teaching or suggestion in the prior art that Owens is or could be made of elastic material?

It is further noted that claims 1, 8 and 15 were amended to include additional structural limitations not found in Owens. For example, Owens does not teach a center portion having a solid cross-section including all of the limitations as required by the claims (compare Fig. 5 of Owens et al.). More specifically, in regards to claim 1, Owens does not teach the unique relationship of the claimed indentation with the center portion and the surrounding ring portion. In regards to claim 8, Owens does not teach a solid, conically shaped center portion. In regards to amended claim 15, Owens does not teach a center portion having a solid cross-section. Accordingly, for at least these reasons, the claims are not anticipated by Owens et al. The remaining pending claims depend from one of claims 1, 8 and 15, and, therefore, are also not anticipated by Owens for the same reasons applied thereto, as well as for the additional subject matter recited in each.

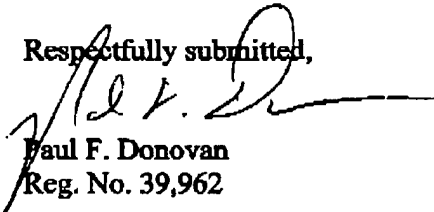
As previously argued it is further submitted that the pending claims also patentably distinguish from Owens under the obviousness standards of 35 U.S.C. 103 because Owens does not suggest all of the recited structural limitations, and there is no basis found in any known prior art that would motivate one skilled in the bumper device art to modify the door stop / wall patch of Owens to correspond to the structural relationships defined in the claims as currently written. Any change to Owens would inherently change the scope of the claimed ornamental design, thereby destroying the intended purpose of Owens. As a result, any such proposed modification would be improper under the guidelines of 35 U.S.C. 103. In the Final Office Action, the Examiner fails to address this argument previously made by the Applicant. Simply because a prior art reference may be modified, does not mean it is proper to do so without some sort of teaching or suggestion in the prior art to do so.

It is further noted that the Examiner states that the claim language does not require that the entire center portion of the device be of continuous solid material. And even if the claim language did require this limitation, it would be obvious to modify Owens to have such a solid center portion. To advance the prosecution of this application, claims 1, 8 and 15 have been amended to more clearly recite that the entire center portion is of a solid material. Moreover, it would not be obvious to modify Owens in the manner suggested by the Examiner for at least the reasons mentioned above.

Reconsideration of the rejected claims and allowance of all the pending claims is respectfully requested. If the Examiner is not persuaded to allow the claims, it is respectfully requested that the Examiner call the undersigned to discuss this case in more detail so that, if necessary, the issues for appeal can be clarified.

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Respectfully submitted,


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